



INSURANCE ASSOCIATION OF CONNECTICUT

February 21, 2020

RE: **HB 5053 – AN ACT CONCERNING THE REDUCTION OF ECONOMIC DAMAGES IN A PERSONAL INJURY OR WRONGFUL DEATH ACTION FOR COLLATERAL SOURCE PAYMENTS MADE ON BEHALF OF A CLAIMANT**

I am Joy Avallone, General Counsel of the Insurance Association of Connecticut (IAC), a state-based trade association for Connecticut's insurance industry. Thank you for the opportunity to provide comments in strong support of HB 5053, An Act Concerning the Reduction of Economic Damages in a Personal Injury or Wrongful Death Action for Collateral Source Payments Made on Behalf of a Claimant.

By way of background, the purpose of personal injury law is to fairly compensate a person injured due to the wrongful acts of another. Damages awarded to an injured person after a trial typically fall under two general categories: (1) Economic and (2) Non-Economic.

Economic damages are those awarded as a direct result of actual financial loss.¹ Economic damages are based on quantifiable losses, such as medical bills and lost wages. Non-economic damages include all other kinds of damages, such as pain and suffering and emotional distress.² Economic and Non-Economic damages also drive settlement values.

HB 5053 will have no impact on awards of Non-economic damages. HB 5053 only seeks to allow for collateral source reduction of Economic damages in cases where a right of subrogation exists, as is the practice in cases where no right of subrogation exists.

In a typical personal injury case, a plaintiff will see a health care provider for injuries he or she sustained. Most providers have different rates for the same procedure, including but not limited to: negotiated rates with Preferred Provider Organizations (PPO), and rates that Medicaid or Medicare will pay. The "sticker price" of the procedure is similar to that of the sticker price of an automobile – it almost always exceeds the amount a consumer actually pays. Just as consumers negotiate lower prices for car purchases, insurers negotiate lower costs for medical care.

Providers accept payment based on the negotiated discounted rates in full satisfaction of the "sticker price" of their bill. For example, Medicaid may pay \$30,000.00 to a medical care provider in full satisfaction of the \$100,000.00 sticker price of billed medical services. The balance of \$70,000.00 then becomes a write-off for the medical care provider. No one, including the injured party, has any further financial obligation to the provider.

¹C.G.S. §52-572h(a)(1)

²C.G.S. §52-572h(a)(2)

In a civil action involving a personal injury or wrongful death claim, evidence of the \$100,000.00 in medical bills is presented during the trial and factored into the award of Economic damages. In order to prevent plaintiffs from receiving windfall recoveries and to ensure awards are based on actual financial loss, C.G.S. §52-225a currently provides that the economic award be reduced by the “total amount of collateral sources which have been paid for the benefit of the claimant as of the date the court enters judgment”.

Accordingly, evidence of payment of \$30,000.00 in full satisfaction of the \$100,000.00 bill is presented and the award would likely be reduced to \$0 to reflect that. If the plaintiff has suffered no financial loss, there is no basis for an award of Economic damages. Plaintiffs would then be credited the amount they paid in premium for health insurance in accordance with C.G.S. §52-225a(c), which provides [t]he court shall receive evidence from the claimant and any other appropriate person concerning any amount which has been paid, contributed or forfeited, as of the date the court enters judgment, by, or on behalf of, the claimant or members of his immediate family to secure his right to any collateral source benefit which he has received as a result of such injury or death. Thus, if a plaintiff has paid premiums to secure the benefit of having their medical bills paid for, they will be credited that amount to make them whole.

C.G.S. §52-225a also provides that “there shall be no reduction for (A) a collateral source for which a right of subrogation exists”. The Connecticut Supreme Court in *Marciano v. Jimenez*, 324 Conn. 70 (2016) recently strictly construed this provision and held that where a right of subrogation exists in any amount, a trial court cannot make any collateral source reduction for damages. A right of subrogation exists in cases including, but not limited to: workers’ compensation, Medicaid, Medicare, and ERISA (cases involving lienholders).

Assume a plaintiff was involved in a motor vehicle accident and his medical bills were paid for by Medicaid. The plaintiff is required to reimburse Medicaid for the amount paid on his behalf, but he has no further financial obligation for the amount that was written off by the provider. Because Medicaid has reimbursement rights, unlike most private insurers, a right of subrogation exists. Per *Marciano*, there shall be no collateral source reduction, causing the following result:

- The sticker price of medical care amounts to \$100,000.00;
- Medicaid paid the provider \$30,000.00 in full satisfaction of the \$100,000.00 sticker price, in accordance with Medicaid rates;
- Medicaid has a lien on the proceeds of the civil action;
- Because a lien exists, the plaintiff is obligated to reimburse Medicaid the \$30,000.00 paid on his/her behalf;
- The plaintiff has no financial obligation beyond the \$30,000.00;
- The \$70,000.00 difference is written off by the provider and no one, including the plaintiff, is obligated to pay the amount;
- An Economic award of \$100,000.00 is made;
- Because a right of subrogation exists, per *Marciano*, there can be no collateral source reduction;
- The plaintiff receives \$100,000.00 in Economic damages;
- Medicaid is reimbursed the \$30,000.00 it paid; and
- The plaintiff receives a windfall of \$70,000.00 in addition to whatever Non-Economic damages were awarded for pain and suffering etc.

The \$70,000.00 difference between the \$100,000.00 medical bill and the \$30,000.00 paid in full satisfaction of the \$100,000.00 bill, if awarded to a plaintiff, is sometimes referred to as “phantom damages”. Because the plaintiff has not suffered a \$70,000.00 loss, he should not receive \$70,000.00 in Economic damages.

In the example above, if plaintiff's medical bills were paid for by plaintiff's private insurer, which has no subrogation rights, as opposed to Medicaid, collateral source reduction would be appropriate. The following would result:

- The sticker price of medical care amounts to \$100,000.00;
- The provider was paid \$30,000.00 by the plaintiff's private insurer, in full satisfaction of the \$100,000.00 sticker price in accordance with the rates negotiated by the private insurer;
- Private insurers typically have no right to reimbursement, so there is no right of subrogation;
- Because there is no lien, the plaintiff has no obligation to reimburse their private insurer the \$30,000.00 paid on his/her behalf;
- The \$70,000.00 is written off by the provider and no one has any obligation to reimburse that amount;
- An Economic award of \$100,000.00 is made;
- Because no right of subrogation exists, collateral source reduction is appropriate;
- The \$100,000.00 Economic award is reduced to \$0 because claimant has suffered no economic loss;
- Claimant will receive credit for premiums paid to secure the private insurance benefits; and
- Plaintiff will remain entitled to any award of Non-Economic damages.

In summary, HB 5053 simply aims to allow collateral source reduction in cases where a right of subrogation exists, as is the practice where no right of subrogation exists. **Limiting Economic damages to cases where plaintiffs have suffered actual financial loss, as opposed to phantom damages, will prevent windfall recoveries for plaintiffs.**

For the aforementioned reasons, the IAC urges you to support HB 5053.

Thank you.